

# REGULATION

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<b>Authority:</b> Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules.			
<b>Subject:</b>  <b>UNFAIR LABOR PRACTICE CHARGES</b>			

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## **1. PURPOSE**

This regulation provides procedures for filing unfair labor practice charges with Civil Service staff.

## **2. CIVIL SERVICE COMMISSION RULE REFERENCE**

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

**Rule 6-8 Recognition Rights for Labor Organizations****6-8.1 Rights of Exclusive Representatives**

*An exclusive representative (1) has the duty of fair representation of all employees in the unit, (2) may engage in collective bargaining with the employer, and (3), when mutual agreement is reached, may submit to the civil service commission for approval a written collective bargaining agreement regarding proper subjects of bargaining.*

\* \* \*

**Rule 6-11 Unfair Labor Practices for the Employer****6-11.1 Coercion**

*It is an unfair labor practice for the employer to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of rights granted by these rules.*

**6-11.2 Interference**

*It is an unfair labor practice for the employer to dominate, interfere with, or assist in the formation, existence, or administration of a labor organization.*

**6-11.3 Discrimination**

*It is an unfair labor practice for the employer to discriminate or retaliate against an employee because that employee has (1) filed an affidavit, petition, or complaint; (2) given information or testimony; (3) formed, joined, or chosen to be represented by a labor organization; or (4) participated in a campaign or election to certify, change, or decertify an exclusive representative.*

**6-11.4 Refusal to Bargain in Good Faith**

*It is an unfair labor practice for the employer to refuse to bargain in good faith over mandatory subjects of bargaining as required by these rules.*

**Rule 6-12 Unfair Labor Practices for Employees or Labor Organizations****6-12.1 Coercion**

*It is an unfair labor practice for employees or labor organizations to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of their rights as granted in these rules.*

**6-12.2 Interference**

*It is an unfair labor practice for employees or labor organizations to interfere with, restrain, coerce the employer with respect to rights protected in this policy or with respect to the orderly selection of a representative to carry out its obligations under these rules.*

**6-12.3 Refusal to Bargain in Good Faith**

*It is an unfair labor practice for employees or labor organizations to refuse to bargain in good faith with the employer over mandatory subjects of bargaining as required by these rules.*

**6-12.4 Striking**

*It is an unfair labor practice for employees or labor organizations to call, institute, manage, or conduct, or participate in a strike for any purpose.*

**Rule 6-13 Unfair Labor Practice Procedures**

*An employer, employee, or labor organization may file an unfair labor practice complaint with the state personnel director. The director has the authority to investigate, obtain facts, statements, or affidavits, make determinations of violations, and assess appropriate penalties.*

**3. STANDARDS****A. Filing.**

1. **Delegation.** The State Personnel Director delegates administration of unfair labor practice charges to Hearings, Employee Relations, and Mediation (HERM).
2. **Time Limits.** An employee, employee organization, or employer may file a written unfair labor practice charge with HERM within six weeks of becoming aware of the cause of the charge. An unfair labor practice charge can be filed up to six months after the unfair labor practice occurred, if good cause for the untimely filing is demonstrated. No charge can be filed for an unfair labor practice that occurred more than six months before the filing date. If an administrative officer finds good cause and accepts a late appeal, any party may request the assigned hearing officer to review the finding *de novo*.
3. **Charges.** An unfair labor practice charge filing must include the following:
  - a. The name and signature of the charging party, the name of any representative filing the charge, and the name of the charged party.
  - b. A citation of the specific unfair labor practices, as defined in rules 6-8, 6-11 and 6-12, that are alleged to have occurred.
  - c. A clear, concise, and complete statement of facts supporting each alleged unfair labor practice, including dates, times, and locations of each alleged act.
  - d. Proof of service of the charge upon the charged party.
4. **Service.** The charging party must simultaneously serve a copy of the charge upon the charged party.
5. **Administrative Review.** If a charging party does not meet the filing requirements in this regulation, HERM shall issue a notice of deficiency and allow the party 14 calendar days to correct the deficiency.
6. **Administrative Dismissal.** An adjudicating officer may administratively dismiss an unfair labor practice charge for any of the following reasons:
  - a. **Not authorized.** The charging party is not authorized to file the charge.

- b. **Failure to state a claim.** The charging party has not addressed an alleged violation of a right specifically enumerated in rules 6-8, 6-11, or 6-12.
- c. **Lack of jurisdiction.** Civil Service lacks jurisdiction over a necessary party or the subject matter of the charge.
- d. **Untimeliness.** The charging party has not filed in a timely manner.
- e. **Barred by prior claim.** Substantially the same charge was adjudicated to finality in another action between the same parties.
- f. **Noncompliance.** The charging party has failed to timely correct a deficient filing.

#### B. Answering.

Each charged party may file a signed, written answer to the charge with HERM within 28 calendar days of the mailing date of the charge. A copy of the answer must be simultaneously served upon the charging party and a proof of service submitted to HERM.

#### C. Hearings.

1. **Scheduling.** If the unfair labor practice charge meets the requirements of this procedure, HERM shall designate an impartial hearing officer and schedule a hearing to take evidence on the charge.
2. **Testimony.** At the hearing the parties may call, examine, and cross-examine witnesses and may introduce into the record documentary and other evidence.
3. **Decision.** The hearing officer shall issue a written decision. The hearing officer shall dismiss or sustain each charge in whole or part. The hearing officer shall order that the respondent (1) cease and desist any unfair labor practices found and (2) take action to remedy their effects.

#### D. Appeals.

The decision of a hearing officer in an unfair labor practice charge must contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission within 28 calendar days after the date the final decision of the hearing officer is issued, as provided in rule 6-14.3.

#### E. Authorized Representation in Unfair Labor Practice Charges.

1. **By nonexclusively represented employees.** A nonexclusively represented employee who is a party in an unfair labor charge may represent himself or herself or may designate as an authorized representative (1) an employee or agent of a limited-recognition organization, (2) an attorney, or (3) another nonexclusively-represented classified employee.
  - a. **Administrative leave.** A charging party shall lose no normal pay or leave credits for necessary travel to and attendance at proceedings scheduled by Civil Service staff.

- (1) If a representative and charging party are employed by the same agency, the appointing authority shall release the representative from regularly scheduled work without loss of normal pay or leave credits to attend proceedings scheduled by Civil Service.
- (2) If the representative and charging party are not employed by the same agency, the representative may be absent from the workplace to attend the Civil Service proceedings only if the representative's appointing authority has approved annual or personal leave.

b. **Limitations.**

- (1) Administrative leave for investigations by employees or representatives is not authorized.
- (2) Overtime, consultation time over 15 minutes, and expenses, including travel expenses, are not authorized.
- (3) An appointing authority may limit the granting of administrative leave to three spokespeople from among a group of charging parties.

2. **By exclusively represented employees.** If an exclusively represented employee files an unfair labor charge, the employee may represent himself or herself or may designate as an authorized representative (1) an employee or agent of the employee's exclusive representative, (2) an attorney, or (3) another exclusively represented classified employee who is in the same bargaining unit. If the charge is filed against the exclusive representative, the charging party cannot designate an employee or agent of the exclusive representative as the charging party's authorized representative without the express written consent of the exclusive representative.

## **CONTACT**

Questions regarding this regulation should be directed to Hearings, Employee Relations, and Mediation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, MI 48909; by telephone, at 517-241-9096 or 1-800-788-1766; or by e-mail to [MDCS-Hearings@michigan.gov](mailto:MDCS-Hearings@michigan.gov).